

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 14205

S. B. TRESSLER,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

ON PETITION FOR REVIEW OF THE
DECISIONS OF THE TAX COURT
OF THE UNITED STATES

**BRIEF AND APPENDICES
FOR THE PETITIONER**

FILED

AUG 1931

PAUL P. O'BRIEN
CLERK

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OPINION BELOW

The memorandum findings of fact and opinion of the Tax Court (Tr. 1-17) are not officially reported.

JURISDICTION

This appeal involves a deficiency in individual income taxes for the year 1946 in amount of \$1,616.80 and for the year 1947 in amount of \$2,049.68 and is taken from the decisions of the Tax Court entered September 17, 1953 (Tr. 16, 17). The case is upon appeal by Petitions for Review filed by the taxpayer, a resident of Reno, Nevada, on December 17, 1953 (Tr. 56-59, 61-65). The cases were tried together in the Tax Court. This Court has jurisdiction under the provisions of Title 26, U.S.C.A., Section 1141(a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948, and Section 128 of the Act of May 24, 1949.

STATEMENT OF THE CASE

The petitioner, a resident of Reno, Nevada, filed his 1946 and 1947 income tax returns with the Collector at Reno, Nevada, and during each of said years claimed as dependents his wife, Pearl Ann Tressler, nee Pearl Ann Mounce, and 3 stepchildren and his aged mother, Katherine Tressler. (Respondent's Exhibits "A" and "B").

Thereafter the respondent filed deficiency assessments for 1946 and 1947 against petitioner on the

ground that the taxpayer had failed to return income of rents from Maxwell Court and Tarpon River Apartments at Fort Lauderdale, Florida, which income producing properties had been purchased in January 1945 by petitioner for his physically disabled son, Kenneth Tressler, after the son had received a medical discharge from the United States Army.

Said properties were sequestered and placed in receivership by the Circuit Court of Broward County, Florida, on **March 13, 1945**, and so held in receivership until **February 7, 1947**. The sole purpose of the sequestration and receivership was to provide support for petitioner's then wife, Ada Zoller Tressler, in an action for separate maintenance commenced by her in the Circuit Court of Broward County, Florida.

The marriage relationship between petitioner and Ada Zoller Tressler began on August 25, 1944, and terminated by Final Decree of Divorce obtained by petitioner at Reno, Nevada, July 17, 1945 (Petitioner's Exh. No. 4). Ada Tressler did not appear or contest the Nevada divorce action, although she was served by publication and had actual knowledge thereof.

Neither petitioner nor his then wife, Ada Tressler, were residents of the State of Florida and petitioner at no time appeared or submitted himself to the Florida State Courts jurisdiction.

The son, Kenneth Tressler, subsequent to his father's divorce from Ada Tressler, did attempt to file an Answer in the Florida State Court setting up the petitioner's divorce decree, but the Florida State Court

would not permit the Answer to be filed. Decree Pro Confesso was obtained against both father and son.

The Florida State Court on **January 7, 1946**, held that the father had purchased the properties and that the title thereto was held **in trust** by Kenneth Tressler for his father, Shriver B. Tressler (Respondent's Exhibit "E").

By Order dated **January 17, 1946**, subsequent to the Nevada divorce, the Florida State Court ordered its receiver to pay certain funds collected as rents to Ada Tressler, the former wife of petitioner, as "temporary alimony, court costs and attorneys' fees" (Respondent's Exhibit "E").

Kenneth Tressler having appeared in the Florida State Court action appealed to the Supreme Court of Florida, but that Court affirmed the lower Court and Certiorari to the Supreme Court of the United States was perfected but denied, likewise Petition for Rehearing Jan. 1947.

In the meantime on **March 21, 1946**, Shriver B. Tressler filed suit in the District Court of the United States for the Southern District of Florida against his former wife, Ada Zoller Tressler, and the State Court Receiver seeking to wrest from sequestration and receivership the income producing properties held in trust by Kenneth Tressler and for the benefit of petitioner's former wife, Ada Zoller Tressler. Petitioner relied upon his Nevada divorce decree and diversity of citizenship. The bill was dismissed and

appeal was taken to the Circuit Court of Appeals for the Fifth Circuit.

Upon denial of Certiorari by the United States Supreme Court and having failed to obtain relief in the United States District Court for the Southern District of Florida, petitioner was compelled to submit to a property settlement agreement with his former wife, Ada Zoller Tressler, under which, although they had only lived together about 5 months, he was compelled to convey to her properties worth about \$70,000.00 and the entire proceeds of rents collected from the Maxwell Court and Tarpon River apartment buildings by the Receiver.

Under the terms of the settlement petitioner recovered the Maxwell Court Apartments on February 7, 1947, in a very run down condition.

Petitioner claimed depreciation for 1946 upon said apartment building and legal expense incurred in attempting to recover possession of his income producing properties although he did not receive any income therefrom.

All of the rents collected by the State Court Receiver from the trust properties from March 13, 1945 to February 7, 1947, were disbursed to his former wife, Ada Zoller Tressler, as temporary alimony, court costs and attorneys' fees under Orders of the Florida State Court entered subsequent to the Nevada divorce decree dated July 17, 1945. The petitioner did not receive any of such revenue and the respondent seeks to compel petitioner to pay income taxes thereon by means of deficiency assessments for 1946 and 1947.

SPECIFICATION OF ERRORS RELIED UPON

- (1) The Tax Court failed to accord full faith and credit to the Final Decree of Divorce entered by the Nevada Court on **July 17, 1945**, upon the ground of extreme cruelty, and
- (2) The Tax Court failed to consider that the payments made to the former wife by the Order of the Florida State Court dated January 17, 1946, were made from properties held in trust and subsequent to divorce and were taxable to the former wife, Ada Zoller Tressler, and not to petitioner.
- (3) The Tax Court erred in failing to allow petitioner to claim full allowable depreciation upon furniture and buildings.
- (4) The Tax Court erred in failing to allow petitioner to deduct attorneys' fees and costs of printing record and briefs upon appeal in litigation seeking to terminate receivership over petitioner's income producing properties.

ARGUMENT

FIRST POINT

THE TAX COURT FAILED TO ACCORD FULL FAITH AND CREDIT TO THE NEVADA FINAL DECREE OF DIVORCE OBTAINED BY PETITIONER, DATED JULY 17, 1945.

The Tax Court in its findings held that neither petitioner or his then wife, Ada Tressler, were citizens of the State of Florida, but merely went to Florida to spend the winter (Tr. 2). Neither party had resided in Florida for 90 days as bona fide residents of Florida and were not citizens or domiciled therein. The wife merely sought separate maintenance in an action unconnected with grounds of divorce (App. B. See 65.10, Florida Statutes).

The State of Florida grants and recognises divorces obtained upon constructive service of process and the Final Decree obtained by petitioner in Nevada dated July 17, 1945, never has been attacked or impeached.

Pawley v. Pawley, 160 Fla. 903, 46 So. 2d. 464, 474, 28 ALR. 2d 1358, cert. denied 340 U.S. 866, 71 S. Ct. 90, 95, L.Ed. 632.

Stewart v. Stewart (1934) 115 Fla. 158, 155 So. 114, 115

Gaylord v. Gaylord, Fla. 45 So. 2d. 507, 509.

The Tax Court of the United States must accord full faith and credit to the divorce decrees of the several states and only the States themselves hold the right to

inquire into the validity thereof when their own citizens' marital rights are affected and only then when made a matter for judicial determination.

Baldwin v. Baldwin (1946) 170 P. 2d 670, 28 Cal. 2d 406

Lynn v. Lynn (1951) 97 NE 2d 748, 302 NY 193 28 ALR 2d 1335 cert. den. 72 S. Ct. 72, 342 US, 849, 96 L.Ed. 640

Herrick v. Herrick, 55 Nev. 59, 68, 25 P 2d, 378

Sweeney v. Sweeney, 42 Nev. 431, 438, 179 P. 638, 639

The right to receive support is only accorded to a wife and upon termination of the marriage relationship the duty to support ceases.

Pawley v. Pawley 160 Fla. 903, 46 So. ed. 464, 474, 28 ALR. 2d. 1358

Chirgwin v. Chirgwin (1938) 26 Cal. App. 2d 506, 79 P. 2d 772

Rodda v. Rodda (1948) 185 Or. 140, 200 P. 2d 616, 202 P. 2d 638, cert. den. 337 US. 946, 93 L. Ed. 1749, 69 S. Ct. 1504

Section 65.10, Florida Statutes, Appendix "B".

SECOND POINT

THE TAX COURT FAILED TO CONSIDER THAT THE PAYMENTS MADE TO THE FORMER WIFE BY THE ORDER OF THE FLORIDA STATE COURT DATED JANUARY 17, 1946, WERE MADE FROM PROPERTIES HELD IN TRUST AND SUBSEQUENT TO DIVORCE AND WERE TAXABLE TO THE FORMER WIFE, ADA ZOLLER TRESSLER, AND NOT TO PETITIONER.

Although the wife's action for separate maintenance was commenced first, the entry of the Divorce Decree terminated all right to temporary alimony under the interlocutory Order in the Florida action, at least until there had been a determination of the validity of the foreign divorce decree.

Pawley v. Pawley 160 Fla. 903, 46 So. 2d. 464, 474,
28 ALR 2d, 1358

Chirgwin v. Chirgwin (1938) 26 Cal. App. 2d 506,
79 P. 2d 772

Atkins v. Atkins (1944) 386 Ill. 345, 54 NE 2d. 488
Frank v. Frank (1951) N. J. 81 A. 2d 172

The action of the Florida Court ordering payments of "temporary alimony under the interlocutory Order to the former wife out of funds derived from property sequestered and placed in receivership to enforce orders for separate maintenance to the former wife, such orders being entered subsequent to the divorce decree, come within the provisions of Title 26, U.S.C.A.,

Section 22(k), 23(u), 171 and Section 3797 (Appendix "A") as being payments required subsequent to divorce under Court Order out of trust funds and all such payments including court costs and attorneys' fees were chargeable as income to the former wife and not to the petitioner herein.

THIRD POINT

THE TAX COURT ERRED IN FAILING TO ALLOW PETITIONER TO CLAIM FULL ALLOWABLE DEPRECIATION UPON FURNITURE AND BUILDINGS.

The record shows that the Maxwell Court Apartments was purchased and rented furnished (Tr. 3). The furniture was valued at \$6,000.00 and the buildings at \$35,400.00. Depreciation at 15 % of \$6,000.00 on the furniture for 1946 amounted to \$900.00; and on the buildings at 3 % of \$35,400.00 amounted to \$1,062.00 making a total depreciation for 1946 allowable on the Maxwell Court Apartments alone of \$1,962.00. Only \$1,931.25 was claimed on both buildings.

The record shows the Tarpon River Apartments were purchased and rented furnished (Tr. 3). The furniture was valued at \$5,000.00 and the building at \$15,675.00. The 1946 depreciation on this furniture, 15 % of \$5,000.00, was \$750.00 and 3 % upon the building \$470.25, making a total depreciation allowable on the Tarpon River Apartments of \$1,120.25.

The correct allowable depreciation on both buildings for 1946 was \$1,962.00 plus \$1,120.25 or \$2,082.25

and this amount should have been allowed petitioner for the reason his buildings were being depreciated and all of the income therefrom was being impounded to pay support to his former wife, court costs, attorneys' fees and receiver's fees.

The Tax Court erred in holding (T. 14) that the evidence does not contain any evidence on which it could reasonably make a finding on the issue raised by amended pleading that the correct depreciation for 1946 was the sum of \$3,020.00.

FOURTH POINT

THE TAX COURT ERRED IN FAILING TO ALLOW PETITIONER TO DEDUCT ATTORNEYS' FEES AND COSTS OF PRINTING RECORD AND BRIEFS UPON APPEAL IN LITIGATION SEEKING TO TERMINATE RECEIVERSHIP OVER PETITIONER'S INCOME PRODUCING PROPERTIES.

The Tax Court in denying the petitioner's claim for legal expenses expended in trying to recover possession of his income producing properties from the clutches of the Florida State Court Receivership decreed to be held in trust for petitioner and sequestered to provide a means to continue to pay separate support and maintenance to the former wife, Ada Tressler, overlooks the fact that this added expense was enforced upon petitioner after he had obtained his decree of divorce by the Courts of a state in which he

had never been domiciled, but merely had purchased income producing property.

Whatever the right of the Florida Court to exercise its powers to prevent the wife from becoming a public charge (she had ample means with which to live and litigate given to her by her husband). Said state of Florida did not hold jurisdiction over the marital res, neither of the spouses were bona fide residents of the State of Florida, they being merely tourists spending the winter (Tr. 2).

Consequently the Florida Court's duty to provide Ada Tressler with support ceased upon entry of the Nevada divorce decree on July 17, 1945, and it should have accorded said final decree full faith and credit when plead by Kenneth Tressler in October 1945 (Tr. 4) since it was his property which had been taken from him to provide a means of support for Ada Tressler.

Kenneth Tressler having been by the Florida Court held to be a constructive trustee in holding title to the apartment buildings purchased by his father thereby brought in question the exact nature of the title to the property and since it did present a question of title, then the least the respondent should have done, was to allow the cost of the Maxwell Court Apartment building to be increased by the Court costs and attorneys' fees incurred by petitioner and his constructive trustee in defending and maintaining litigation seeking to protect the title and right to possession and right to receive the earnings from the income producing property.

The act of the Florida Court imposed a duty upon the owner of the property to seek its recovery. This was a necessary business expense, petitioner was attempting to conserve his 12 unit apartment business held for the production of income. (Vincent v. C.I.R. (1952) 18 T. C. 339) USCA Title 26, Section 23, (a) (2).

CONCLUSION

Petitioner respectfully submits that the Tax Court in entering its Decisions (Tr. 16, 17) imposing \$1,616.80 and \$2,049.68 additional income tax upon petitioner for the tax years 1946 and 1947 erred in that the income earned by the trust property and paid under Order of Court to the former wife of petitioner subsequent to divorce was taxable as income to the former wife and not to petitioner, he not having ever received one cent of revenue from the properties between March 1945 and February 1947.

The Tax Court likewise erred in disallowing petitioner the total amount of depreciation to which he was entitled upon the two furnished apartment houses; the cost of the buildings and furniture appearing in the record.

The Tax Court erred in failing to consider that the incurring of legal expenses in connection with litigation the purpose of which was to regain possession and control of the income producing business property from the Florida State Court Receivership was a necessary business expense and should have been al-

lowed the taxpayer, no attempt was made to include the attorneys' fees incurred in petitioner's divorce action.

WHEREFORE, petitioner sincerely trusts each of the Decisions dated September 17, 1953, will be reversed.

Respectfully submitted,

/s/ JOSEPH A. FITZSIMMONS,
212-214 Maxwell Arcade
Fort Lauderdale, Florida

Attorney for Petitioner
Shriver B. Tressler

APPENDIX A

U. S. CODE

Title 26, § 22: "(k) ALIMONY, ETC., INCOME. In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. * * *"

Title 26, § 23: "(u) ALIMONY, ETC., PAYMENTS. In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the amount of any such payment is, under section 22(k) or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection. * * *"

Title 26, § 171: "INCOME OF AN ESTATE OR TRUST IN CASE OF DIVORCE, ETC. (a) INCLUSION IN GROSS INCOME. There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance the amount of the income of any trust which such wife is entitled to receive and which, except for the provisions of this section, would be includible in the gross income of her husband, and such amount shall not, despite section 166, section 167, or any other provision of this chapter, be includible in the gross income of such husband. * * *"

"(b) WIFE CONSIDERED A BENEFICIARY. For the purpose of computing the net income of the estate or trust and the net income of the wife described in section 22(k)

or subsection (a) of this section, such wife shall be considered as the beneficiary specified in this supplement. A periodic payment under section 22(k) to any part of which the provisions of this supplement are applicable shall be included in the gross income of the beneficiary in the taxable year in which under this supplement such part is required to be included. Added Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title I, § 120(c), 56 Stat. 817.”

Title 26, § 25: “(3) DEFINITION OF DEPENDENT. As used in this chapter the term “dependent” means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

“* * * A payment to a wife which is includible under section 22(k) or section 171 in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent. 53 Stat. 17, amended June 25, 1940, 11:45 a.m., E.S.T. c. 419, Title I, § 6(a), 113, 55 Stat. 696, 697; Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title I, §§ 112(b), 120(e) (1), 126(i) (1), 131(a) (1), (b), 56 Stat. 811, 818, 825, 827, 828; Feb. 25, 1944, 12:49 p.m., E.W.T., c. 63, Title I, §§ 103, 107(a), 58 Stat. 31; May 29, 1944, 7 p.m., E.W.T., c. 210, Part I, § 10 (a, b), 58 Stat. 238; Nov. 8, 1945, 5:17 p.m., E.S.T., c. 453, Title I, § 102(a), (b) (2), 59 Stat. 558; Apr. 2, 1948, 3:18 p.m., E.S.T., c. 168, Title II, § 201, 62 Stat. 112.”

Title 26, § 3797: DEFINITIONS.

“(7) HUSBAND AND WIFE. As used in sections 22(k), 23(u), 171, and the last sentence of section 25(b) (3), if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term “wife” shall be read “former wife” and the term “husband” shall be read “former husband”; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa wherever appropriate to the meaning of such sections, the term “husband” shall be read “wife” and the term “wife” shall be read “husband”. * * *

APPENDIX B
FLORIDA STATUTES ANNOTATED

65.02 RESIDENCE REQUIRED

In order to obtain a divorce the complaint must have resided ninety days in the State of Florida before the filing of the bill of complaint.

65.03 ALL DIVORCES TO BE A VINCULO

No divorce shall be from bed and board, but every divorce shall be from bonds of matrimony.

65.04 GROUNDS FOR DIVORCE

No divorce shall be granted unless one of the following facts shall appear:

- (1) That the parties are within the degrees prohibited by law.
- (2) That the defendant is naturally impotent.
- (3) That the defendant has been guilty of adultery.

If it shall appear to the court that the adultery complained of was occasioned by collusion of the parties, and done with the intent to procure a divorce, or that both parties have been guilty of adultery, no divorce shall be decreed.

- (4) Extreme cruelty by defendant to complainant.
- (5) Habitual indulgence by defendant in violent and ungovernable temper.
- (6) Habitual intemperance of defendant.
- (7) Willful, obstinate and continued desertion of complainant for one year.
- (8) That the defendant has obtained a divorce from the complainant in any other state or country.
- (9) That either party had a husband or wife living at the time of the marriage sought to be annulled.

FLORIDA STATUTES ANNOTATED**65.09 ALIMONY UNCONNECTED WITH DIVORCE**

If any of the causes of divorce set forth in § 65.04 shall exist in favor of the wife, and she be living apart from her husband, she may obtain alimony without seeking a divorce upon bill filed and suit prosecuted as in other chancery causes; and the court shall have power to grant such temporary and permanent alimony and suit money as the circumstances of the parties may render just; but no alimony shall be granted to an adulterous wife.

65.10 ALIMONY UNCONNECTED WITH CAUSES OF DIVORCE

If any husband having ability to maintain or contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him or living apart from him through his fault, may obtain such maintenance or contribution upon bill filed and suit prosecuted as in other chancery causes; and the court shall make such orders as may be necessary to secure to her such maintenance or contribution.

APPENDIX C

No. 90072
Dept. No. 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE
COUNTY OF WASHOE

SHRIVER BERT TRESSLER, Plaintiff,	}	Filed Jul 17 2:04 PM '45
vs.		E. H. BEEMER, CLERK
ADA ZOELLER TRESSLER, Defendant.		By V. Whitehead Deputy

DECREE

This case came on regularly for trial before the undersigned Judge of said Court, sitting without a jury, Plaintiff appearing by and through his attorney, Lloyd V. Smith, Esq., Defendant not appearing, although the Defendant was served in accordance with the order of this Court by publication and mailing, and more than thirty days having elapsed since service was completed in both respects, and the Defendant having failed to answer or otherwise appear in the time allowed by law, the default of the Defendant was noted and entered at length in the Minutes, and such proceeding were regularly had herein that on the 17th day of July, 1945, the Court rendered its decision in favor of the Plaintiff and against the Defendant, made and entered herein its certain Findings of Fact and Conclusions of Law and order that Judgment be entered accordingly.

NOW, THEREFORE, in consideration of the premises and in conformity with said Decision, Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Petitioner's Exhibit No. 4

That Plaintiff be, and he hereby is, granted a decree of divorce from Defendant, on the ground of extreme cruelty, same being final and absolute in form, force and effect, the laws of the State of Nevada providing no interlocutory period or conditions or restrictions on remarriage; and that the bonds of matrimony now and heretofore existing between Plaintiff and Defendant are fully, completely and forever dissolved and that Plaintiff and Defendant are both and each hereby restored to the status of single persons.

DONE IN OPEN COURT this 17th day of July, 1945.

EDGAR EATHER
District Judge
Presiding.

RECORDED IN JUDGMENT RECORD
Book A 71, Page 181

E. H. BEEMER, COUNTY CLERK
By B. Buchanan, Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE
COUNTY OF WASHOE

SHRIVER BERT TRESSLER,	} Plaintiff	No. 90,072
vs.		
ADA ZOELLER TRESSLER,	} Defendant	Dept. No. 1

I. E. H. BEEMER, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that I have compared the foregoing with the original thereof, and that I am the keeper of said original, keeping same on file in my office as the legal custodian, and keeper of the same under the laws of the State of Nevada, and I further certify that the foregoing copy, attached hereto is a full, true and correct copy of the DECREE and now on file and of record in my office.

I do further certify that the same has not been altered, amended or set aside, but is still of full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court this 6 days of August, A.D. 1945.

COURT
SEAL

E. H. BEEMER, County Clerk

I, Wm. McKnight, one of the Presiding Judges of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that said Court is a Court of Record, having a Clerk and a Seal; and that there is no provision by law for a chief judge or presiding magistrate thereof, that both of said two judges are placed by law on an equality as to authority; that E. H. BEEMER, who has signed the annexed attestation, is the duly elected and qualified County Clerk of the County of Washoe, and was at the time of signing said attestation, ex-officio Clerk of said Court.

That said signature is his genuine hand writing and that all of his official acts as such Clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

Witness my hand that 6 day of August, A.D. 1945.

WM. McKNIGHT

One of the Presiding Judges of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

STATE OF NEVADA, }
County of Washoe } ss.

I, E. H. BEEMER, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that the Honorable Wm. McKnight whose name is subscribed to the preceding Certificate, is one of the Presiding Judges of said Court, duly elected and qualified, and that the signature of said Judge to said Certificate is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 6 day of August A.D. 1945.

COURT
SEAL

E. K. BEEMER

County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe.

Book 127, Page 62

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
IN CHANCERY.

No. 10760

ADA A. TRESSLER,	Plaintiff,	}
vs.		
SHRIVER B. TRESSLER, et al,	Defendants.	

ORDER

This cause came on to be heard upon motion of the Plaintiff for the entry of an order that all the property set out and described in Plaintiff's Bill of Complaint and the amendments thereto, and the returns and profits therefrom, be decreed to be held in trust by the Defendant, Kenneth Tresler, for the use and benefit of the Defendant, Shriver B. Tresler, the Bill of Complaint herein and the amendments thereto, the exhibits thereto, the decree pro confesso, heretofore duly and regularly entered against the Defendant, Shriver B. Tressler, and the decree pro confesso, heretofore duly and regularly entered against the Defendant, Kenneth Tressler, the testimony adduced before the Court in behalf of Plaintiff, the evidentiary exhibits introduced by Plaintiff, and the whole record in said cause, and it appearing that the Court has jurisdiction of the parties and the subject matter, and being fully advised in the premises, it is,

ORDERED, ADJUDGED AND DECREED that the following described property located in Broward County, Florida, including the rents and profits therefrom, heretofore sequestrated by this Court, placed in the hands of a receiver, and the rents and profits in the hands of the receiver, to-wit:

- (1). Lots eighteen (18) and Nineteen (19) of Block thirty-nine-L (39L) of CROISSANT PARK, according to the plat thereof recorded in Plat Book 4, page 28, of the public records of Broward County, Florida.

Respondent's Exhibit "E"

- (2). Lots nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24) in Block four (4), according to the plat of Lauderdale now on record in the office of the Clerk of the Circuit Court, for the County of Dade and State of Florida, in plat book 2 at page 9 of said records, subject to the Federal Highway Easement over the East Eight (8) feet of Lot twenty-four (24).
- (3). Lots one (1), two (2) and three (3) of Block thirty (30) of NORTH LAUDERDALE, an addition to the Town of Ft. Lauderdale, according to the plat thereof recorded in Plat Book 1, page 182, of the public records of Dade County, Florida.
- (4). Lot thirteen (13) of Block four (4) of TARPON RIVER PARK, according to the plat thereof recorded in plat book 15, page 44, of the public records of Broward County, Florida, and

the rents and profits from the above-described premises now in the hands of Ruth Westerberg, receiver, and all future rents and profits derived or to be derived from said premises, together with all the real estate hereinabove described are held in trust by the Defendant, Kenneth Tressler, for the Defendant, Shriver B. Tressler, and that the said Shriver B. Tressler is the equitable and beneficial owner of all of said property, both real and personal hereinabove described, and that the record legal title of said property is held by the Defendant, Kenneth Tressler, in trust for the defendant, Shriver B. Tressler.

DONE and ORDERED this 7th day of January, A.D. 1946.

/s/ GEORGE W. TEDDER
Circuit Judge

STATE OF FLORIDA, BROWARD COUNTY

This instrument filed for record 7th day January 1946 and recorded CHANCERY ORDER BOOK 127, page 62. Record Verified.

TED CABOT, Clerk

By /s/ Zenda Alexander, D.C.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
 CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA.
 IN CHANCERY No. 10760

ADA A TRESSLER, vs. SHRIVER B. TRESSLER, et al.,	Plaintiff, Defendants.	}
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ORDER

This cause coming on to be heard upon plaintiff's verified motion for the entry of an order for the enforcement of her lien for the amount of \$300.00 per month as temporary alimony and support from March 3rd, 1945 to June 28th, 1945, the enforcement of her lien for \$334.86 costs expended by her up to and including the 28th day of June 1945 and temporary attorneys' fees in the amount of \$2,000.00 under and by virtue of an order of this Court dated June 28th, 1945 and for the entry of an order that the sum of \$300.00 per month as alimony and support allowed plaintiff under the order of this Court dated June 28th, 1945 from June 28th, 1945 to an including January 3rd, 1946, to be and constitute a lien on all of the property set-out and described in plaintiff's Bill of Complaint and amendments thereto and the rents and profits derived therefrom, located in Broward County, Florida, and that such lien for temporary alimony and support from March 3, 1945 up to and including January 3rd, 1946

In the amount of	\$3,000.00
Costs expended to June 28th, 1945	
in the amount of	334.86
And temporary attorneys' fees allowed by	
Court in order dated June 28th, 1945	
in the amount of	2,000.00

be enforced and paid out of the real estate set-out and described in her Bill of Complaint and amendments thereto

Respondent's Exhibit "E"

and the rents and profits derived therefrom now in the hands of Ruth Westerberg, Receiver, and all of said property located in Broward County, Florida; that the money in the hands of the receiver be ordered paid to the plaintiff,

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or her said attorneys, Davis & Lockhart, within one day after receipt of a true copy of the order of this Court, and credited upon the amount due her and that this Court order sold sufficient of the real estate to satisfy the balance due plaintiff.

It appears from the report of the receiver filed in this cause on the 14th day of January A.D. 1946, that she has in her hands and deposited in the bank on December 31st, 1945, \$5,209.89 received as rent;

That it appears from the report of the receiver filed on the 5th day of December 1945, that the receiver had in the bank as of November 30, 1945, the sum of \$3,527.90;

The the net rents collected during December amounted to \$1,681.99;

That it appears from the verified motion herein that rents due and payable and to be collected by the Receiver during the month of January 1946, will be in excess of \$1,500.00 and

That it further appears to the Court that by February 1st, 1946 there should be ample funds in the hands of the Receiver to pay the whole of plaintiff's claim set-out in her motion, together with receiver's fees, costs and attorney's fees and that it will not be necessary at this time to order any of the real estate sold for the purpose of paying the amount, or any part thereof, set-out in plaintiff's motion It further appearing to the Court that no part of temporary alimony and support, costs and temporary attorneys' fees set-out and decreed to plaintiff in the order of this Court of June 28th, 1945, has been paid and the Court being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED

(1) That the amount of temporary alimony and support of \$300.00 per month from March 3rd, 1945 to June 28th, 1945, the amount of costs expended by plaintiff up to and including June 28th, 1945, in the amount of \$334.86 and temporary attorneys' fees in the amount of \$2,000.00 under and by virtue of an order dated June 28th, 1945, constituted a lien on all of the property set-out and described in plaintiff's Bill of Complaint and amendments thereto located in Broward County, Florida and the rents and profits derived therefrom.

(2) That the temporary alimony and support in the amount of \$300.00 per month due plaintiff from June 28th, 1945 to January 3rd, 1946, be, and the same is hereby decreed to be a lien upon all of the property-set-out and described in plaintiff's Bill of Complaint and the amendments thereto located in Broward County, Florida, and also the rents and profits derived therefrom.

(3) That there is due and unpaid to plaintiff up to and including January 3rd, 1946 as temporary alimony and support the sum of \$3,000.00; her costs expended to June 28th, 1945 in the amount of \$334.86 and temporary attorneys' fees allowed her by order of this Court on June 28th, 1945, in the amount of \$2,000.00 making a total sum of \$5,334.86.

(4) That the receiver, Ruth Westerberg, be, and she is hereby ordered to pay to plaintiff, or her attorneys, Davis & Lockhart, or either of them, taking receipt therefore, within one day after the receipt of a true copy of this order of the Court, the amount of \$5,334.86, if sufficient funds is in her hands so to pay and if not, to pay the amount in her hands held as such receiver in this cause to be credited upon the amount here so ordered to be paid and thereafter to pay the balance of said sum as soon as sufficient funds is received by her to so pay said balance.

(5) Jurisdiction is hereby retained by this Court to enforce all matters and things herein adjudicated.

DONE AND ORDERED in Chambers at Fort Lauderdale,
Florida, this 17th day of January A.D. 1946.

/s/ GEORGE W. TEDDER
Judge

STATE OF FLORIDA, BROWARD COUNTY

This instrument filed for record 17th day
January 1946 and recorded CHANCERY OR-
DER BOOK 127, page 163. Record Verified.

TED CABOT, Clerk

By /s/ Zenda Alexander, D.C.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA.

No. 10760

<p>ADA A. TRESSLER,</p> <p style="text-align: center;">vs</p> <p>SHRIVER B. TRESSLER KENNETH TRESSLER and RUTH WESTERBERG, as Receiver,</p>	<p>Plaintiff,</p> <p style="font-size: 2em;">}</p> <p>Defendants.</p>
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FINAL DECREE

The original suit filed in this cause on March 7, 1945, prayed for temporary and permanent alimony unconnected with divorce, and for suit money to compensate her attorneys for services to be rendered, against the defendant, Shriver B. Tressler, as the husband of plaintiff. She further sought a declaratory decree adjudging certain real estate described in the bill of complaint to be held in trust by the defendant Kenneth Tressler for the defendant Shriver B. Tressler; further, that an injunction be entered restraining the defendant, Kenneth Tressler and Shriver B. Tressler from transferring any of said properties, and that a Receiver be appointed to take charge of the same. A Lis Pendens was filed on the same date. On March 13, 1945, at a hearing held on the bill of complaint and subsequent amendments thereto, and the answer of the defendant Ruth Westerberg, as Agent for the defendant Shriver B. Tressler, Ruth Westerberg was appointed Receiver of the property known as Tarpon River Apartments and the Maxwell Apartments. The injunction as prayed was entered against the defendants Shriver B. Tressler and Kenneth Tressler. The Court directed the Receiver to permit the plaintiff to occupy apartment No. 3 in the Maxwell Apartments without pay-

Respondent's Exhibit "E"

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ment of rent therefor, and that Ruth Westerberg, the Receiver be permitted to occupy one apartment in the Tarpon River Apartments from May 1st, 1945, to May 1st, 1946, at the rental of seventy-five (\$75.00) dollars per month, which sum she was not required to pay until her compensation as Receiver was fixed by the Court.

Many pleadings were filed in the cause, and many hearings thereon were had. Four different decrees on different phases of the case were appealed to the Supreme Court of Florida, all of which were affirmed, and to the last decree, after affirmance by the Supreme Court of Florida, petition for writ of certiorari was filed in the Supreme Court of the United States, which petition was denied by said court. A suit was also filed by the Tresslers against the plaintiff herein, and the Receiver in the United States District Court for the Southern District of Florida, which suit was dismissed by the Court, and an appeal taken to the Circuit Court of Appeals of the Fifth Judicial Circuit. After all of this litigation a compromise property settlement was effected by which certain valuable properties were conveyed to the plaintiff. The settlement further provided that the funds in the hands of the Receiver derived from the rent of the properties involved be disbursed by said Receiver as follows:

(1) Compensation due the receiver for her services.

(2) The amount due the firm of Davis & Lockhart for expenditures made by them in representing the Receiver, together with Ada A. Tressler, in the United States Supreme Court, United States District Court, and the United States Circuit Court of Appeals.

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(3) The amount, if any, to be paid to the Receiver's attorneys, Hugh Lester and Davis & Lockhart.

(4) And the balance, if any, to the plaintiff, Ada. A. Tressler.

A controversy arose between the parties as to how these funds should be disbursed by the Receiver. Some testimony on this question was heard before the Court, and the remainder of the testimony before the Special Master, who was appointed to complete the testimony and make his findings of law and fact. Exceptions were filed by Davis & Lockhart on their own behalf, by the plaintiff and by the Receiver. The Special Master recommended that the Receiver be allowed as compensation fifteen per cent of the aggregate sum of the rents collected, which amounted to \$3134.46, from which sum should be deducted the rental of the apartment occupied by her for twenty-one (21) months, at seventy-five (\$75.00) dollars per month, or a total of \$1575.00, leaving a balance due the Receiver of \$1559.46. He further recommended that Hugh Lester, attorney for the Receiver be allowed a fee of \$1500.00; that Davis & Lockhart be allowed \$362.55 for expenses incurred in litigation in the Federal Courts, and a fee of \$500.00 for representing the Receiver in the Federal Courts.

The plaintiff and Davis & Lockhart in their exceptions to the award to the Receiver, and to the Receiver's attorney, contend that the fees allowed are excessive. Davis & Lockhart also contend that the fee awarded to them for representing the Receiver in the Federal Courts is inadequate. The Receiver excepts to the award made to her and contends that it is inadequate. As to the awards made to the Receiver, and the Receiver's attorney, the exceptions thereto should be overruled. The work performed by the Receiver,

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and the services rendered by the attorney was made more difficult by the conditions and circumstances of the times in which they labored. With so many questions confronting the Receiver almost daily, she would of necessity frequently consult her attorney, so as to avoid errors in deciding the problems presented.

I do not agree with the contention as made that the fees awarded to the receiver and her attorney should be materially reduced, because it would deprive the plaintiff of the fruits of a property settlement to which she would otherwise be entitled. The Master correctly held that the Receiver was only a nominal party to the proceedings. The real party in interest was the plaintiff, without whom no suit of any kind could have been maintained. Her interests were primary and the Receiver's interest was a mere incident connected with the suit. She performed nevertheless an important service, and the fact that a Receiver was appointed no doubt aided in the settlement agreement. The suit was filed to secure support for the plaintiff, and the seizure of the property involved made it possible for her to enforce a judgment for such support, if entered. She has no right to complain. The first decree entered in the case gave her the right to occupy one of the apartments without the payment of the rent. The settlement agreement provided for the conveyance of property valued at many thousands of dollars. She stipulated and agreed that the funds in the hands of the Receiver be used to pay the Receiver and the various attorneys mentioned therein. Each of these individuals rendered splendid service which resulted in benefit to her and neither of these persons is overpaid by the awards here made.

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I am inclined to sustain the objection of Davis & Lockhart to the award of \$500.00 for their services as attorneys for the Receiver in all of the federal Courts. The suit filed in the United States District Court was more directly against the Receiver, although the interests of the plaintiff were more largely involved. The same is true of the appeal to the United States Supreme Court. It would be difficult to separate the services rendered to the plaintiff and to the Receiver. The questions presented for each were almost identical. The attorneys are contending for \$2500.00 for their services in representing the Receiver, which sum is inadequate for all of the services rendered by them in the

Federal Courts. In view of the great amount of work done, the difficult questions of law presented, and the many hearings attended I do not think that an award of \$2500.00 for services to the Receiver is excessive.

Thereupon, IT IS ORDERED, ADJUDGED AND DECREED, as follows:

(1) That the exceptions to the Special Master's Report as to the awards made to the Receiver and to her attorney, be and they are hereby overruled, and that the Receiver, RUTH WESTERBERG, be paid the sum of \$3134.46 for her services as Receiver, less the sum of \$1575.00 for the rental of an apartment occupied by her, leaving a balance due her of \$1559.46, and that a fee of \$1500.00 be paid to Hugh Lester, as attorney for said Receiver.

(2) That the exceptions to the Special Master's Report as to the fee awarded to the firm of Davis & Lockhart for services rendered to the Receiver in all of the Federal Courts be, and the same is hereby overruled.

(3) That the sum of \$362.55 be paid to the firm of Davis

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& Lockhart for expenses incurred in the litigation in all of the Federal Courts.

(4) That a fee of \$2500.00 be, and the same is hereby awarded to the firm of Davis & Lockhart, as attorneys, for services rendered to the Receiver, in all the Federal Courts.

(5) That all the costs accrued but not paid, shall be paid to the persons entitled to receive the same.

(6) That the remaining sums of money in the hands of the Receiver be paid over to the the Plaintiff herein, ADA A. TRESSLER.

DONE AND ORDERED, this the 16th day of July, 1947.

/s/ GEORGE W. TEDDER
Circuit Judge

STATE OF FLORIDA, BROWARD COUNTY

This instrument filed for record 16th day
of July 1947 and recorded CHANCERY OR-
DER BOOK 140, page 356. Record Verified.

TED CABOT, Clerk

By /s/ Zenda Alexander, D.C.

